



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 5, 2010

Dear Chairman Rivera,

Thank you for your December 15, 2009 letter detailing the most recent recommendations of the Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee"). Let me take this opportunity first to commend the Committee for its vision, dedication, and hard work and let me also thank all of the committee members for their tireless efforts in furtherance of the interests of diversity in the communications industry. Your service is vital to the FCC and to the American people.

I share the Committee's commitment to transparency and accountability in government and the necessity to have diverse participants involved at all levels of the decision-making process. I also look forward to a reinvigorated working relationship with the Committee to ensure that the Commission gives due and complete consideration to all of the recommendations offered. To that end, Barbara Kreisman, Jamilla-Bess Johnson, and Carolyn Williams from our FCC team remain committed to working with you and making sure that you get the help you need to do your job. In addition, the Office of Communications Business Opportunities ("OCBO") will be taking on an increased role in assisting the Committee as it pursues its mission to promote diversity in the communications industry. Accordingly, you should also feel free to call on Thomas Reed, OCBO's Director, for any assistance you may need going forward.

I am currently reviewing each of the recommendations summarized in your December 15th letter. I will endeavor here to summarize the status of the agency's consideration of each resolution:

1. The Diversity Committee recommended that "the Commission acknowledge and act upon its affirmative duty under Section 706 of the Communications Act to take proactive steps to close the digital divide."

The Commission is committed to ensuring that all of its actions and decisions are data driven and that we take into account the views and concerns of un-served and under-served communities. As you know, the Commission has hosted over fifty workshops and public hearings in the last few months focused on various aspects of broadband deployment and adoption as it considers its final recommendations to Congress regarding a National Broadband Plan. We have solicited and received comments and testimony from advocates for un-served and under-served communities in an effort to both diagnose the problem and propose possible solutions. For example, we addressed the issue of low adoption rates in underserved communities directly in our October 2, 2009 workshop on "Diversity and Civil Rights Issues in Broadband Deployment and Adoption." Here, the

Commission invited a panel of experts to begin the process of identifying the best strategies for resolving civil rights and diversity issues that may accompany the implementation of the National Broadband Plan and for closing the gap in broadband access and adoption that stubbornly persists in many minority communities. On August 18, 2009, the Commission also hosted a workshop on “Broadband Opportunities for Small and Disadvantaged Businesses.” The workshop explored how broadband access and availability impact small and diverse businesses and how the digital divide continues to impede economic development in minority communities.

In these and other workshops, the Commission heard about gaps the broadband team identified in our broadband infrastructure, including communities un-served and under-served by high-speed Internet providers, shortfalls in adoption, and impending shortages in spectrum. In response to your recommendation, I reiterate that these gaps must be addressed boldly for America to take full advantage of the benefits of universal broadband. In the National Broadband Plan, the agency will identify the proactive steps the Commission will take that we believe will assist the effort to close the digital divide. I look forward to conferring with the Diversity Committee soon thereafter to receive your assessment regarding the sufficiency of our initial steps toward ubiquitous broadband.

2. The Diversity Committee recommended that the Commission’s Website should include a dedicated section of the site for educational materials for regional and local lenders, investors, and minorities and women seeking funding for broadcast acquisitions. The Committee also recommended that the Office of Communications Business Opportunities be tasked with implementing this recommendation on a day-to-day basis.

There is widespread agreement that access to capital is the biggest hurdle facing small business entrepreneurs, including minorities and women, who hope to enter and thrive in the communications arena. While the Commission considers what more it can and should do through rulemakings to promote diversity and foster the development of new entrants in broadcast media, we accept the Diversity Committee’s charge to provide prospective entrepreneurs with more detailed and practical information on financing options on our website. Per your recommendation, we are working to provide OCBO with the resources and expertise needed to serve this very valuable function. Together with the capitalization strategies workshops OCBO has committed to conducting on an annual basis, the Commission agrees that up-to-date, easy-to-access information on our website could greatly assist new entrants in broadcast media. I look forward to continued discussions with the Committee regarding the specific content that would prove most useful to interested entrepreneurs.

3. The Diversity Committee recommended that the Commission implement an Outreach Program that will proactively seek to increase awareness of the benefits of lending to and investing in minorities and women in the broadcasting industry. This Outreach will be twofold and include outreach to other government agencies and the private sector in order to facilitate lending to minorities and women.

I agree that an Outreach Program is an excellent idea. As noted above, OCBO has already committed to hosting annual capitalization strategies workshops such as the one it held on November 12, 2009, for small and diverse telecommunications businesses. The panelists for the November workshop consisted of experts in private and public funding options. As it did then, OCBO will continue to collaborate with the Department of Commerce, the Small Business Administration, the Department of Agriculture and other agencies, as well as experts in the private equity arena, on the ever important issue of access to capital. There are very few areas where capitalization challenges are more keenly felt than in the broadcasting industry. The Commission continues to develop strategies not only for educating small and diverse entrepreneurs regarding private and public funding, but also for bringing investors and lenders to the table to facilitate a continued flow of funding to these entities. Within this effort, we will consider ways we can expand our outreach to private and public lenders to encourage a deeper exploration of the benefits of investing in a diverse array of broadcasting companies.

4. The Diversity Committee recommended that the Commission designate one FCC Commissioner to oversee implementation of the access to capital and funding acquisitions recommendations.

I agree that capitalization challenges are among the most challenging issues facing new entrants in communications. As businesses of all sizes are struggling to survive the worst economic downturn in generations, it only makes sense that the FCC should respond with an even more dedicated focus on identifying winning capitalization strategies for all communications businesses. The subdivision of the Commission directly charged with addressing this important topic is the Office of Communications Business Opportunities. This Office is already hard at work developing programs and policies that will eliminate barriers to capital for small and diverse businesses, including many of the insightful Committee recommendations already discussed herein, and I look forward to working with my fellow Commissioners to implement initiatives identified by the Office. At present, I believe that the most effective way to organize the Commission's efforts on this issue is for the Director of OCBO to play the lead role in organizing the Commission's efforts in this area, working with the Chairman and all of the Commissioners and their staff on this important issue.

5. The Diversity Committee recommended that the Commission consider formally creating a joint Native Nations/FCC Broadband Taskforce charged with developing a comprehensive approach for resolving the significant barriers to broadband deployment and adoption on Tribal Lands.

The Commission is actively engaged on broadband deployment and adoption issues involving Native Nations. In the ongoing national broadband effort, our broadband team has identified some of the unique deployment and adoption issues impacting Tribal Lands. Accordingly, the National Broadband Plan will address broadband deployment and adoption challenges facing many un-served and under-served communities, including Native Americans. I know that the plan is only the first step in a

long discussion about ubiquitous broadband, so part of our charge with respect to broadband is to identify viable next steps for bringing broadband to all Americans. The National Broadband Plan will cover some of this ground but not all, including its focus on the particular problems facing Native Nations. Therefore, the agency is considering the efficacy of a joint task force and will advise you regarding progress and the extent of available resources as we complete our work on the National Broadband Plan.

6. The Diversity Committee recommended that the Commission: (1) convene a forum where communications companies and non-profit organizations can share information about successful practices and programs for the retention and promotion of diverse candidates; and (2) consider whether additional compliance options should be added to the Commission's EEO rules so that more activities focused on retention and promotion of diverse candidates would "count" towards EEO compliance.

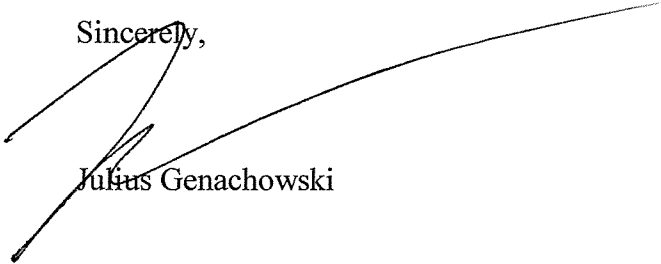
America's strength is in its diversity. The ultimate resilience and success of the communications industry will depend on the diverse backgrounds and talents of the American citizens that populate it. In the past, the Commission has conducted hearings on EEO best practices, and in consideration of the Committee's timely recommendation, we are happy to reinstitute the practice as the Committee has recommended here. Therefore, the Commission accepts this recommendation and will task OCBO and the Policy Division of the Media Bureau to organize a forum on the recruitment, retention, and promotion of diverse candidates in the communications industry. Further, OCBO and the Media Bureau will consult with the Committee regarding the precise agenda and content for this forum.

7. Finally, the Diversity Committee recommended that the Commission use its authority pursuant to § 403 of the Communications Act of 1934 to institute a 403 investigation to determine whether the ratings practices currently being employed in certain markets in the radio industry are having an inordinate negative effect on certain formats. Also, the Committee recommended that the Commission consider whether these same ratings practices have any impact on diversity of ownership in radio.

Section 403 of the Communications Act gives the Commission the power to conduct investigations of any complaint of any violation of its rules or provisions of the Communications Act, or to explore any other matter relating to the provisions of the Act. Such investigations are often conducted before an Administrative Law Judge, but can be conducted before the Commission itself, and allow the FCC to use full discovery techniques (e.g., document production requests and depositions) and to conduct an evidentiary hearing. As you know, the FCC issued a notice of inquiry ("NOI") in May 2009, as to whether Arbitron's Portable People Meter underestimates minority radio listeners. Our review pursuant to this proceeding is still pending. We will advise the Committee regarding the possibility of a 403 investigation once we have concluded our review of the record pursuant to the Arbitron NOI. Should the record prove insufficient, we will consider further inquiry or investigation.

Our review of the Diversity Committee's recommendations is ongoing, so please consider that we may amend our response to certain recommendations from time to time as we continue to evaluate the legal implications of the measures you recommend as well as the Commission's available resources to implement specific programs. My staff is, of course, available to answer any questions or concerns you may have. We recognize that the Diversity Committee is made up of people who have tremendously demanding lives and careers beyond the FCC but nevertheless choose to devote precious free time and energy to guiding our analysis of the issues impacting diversity in the communications industry. We will always endeavor to credit your effort by giving your recommendations the rigorous consideration they deserve. Now, more than ever, we require the Committee's expertise and leadership on these important issues. Thank you again for these thoughtful recommendations and for the invaluable work that you do everyday. Please do keep the ideas coming. Together, we still have much to do.

Sincerely,



Julius Genachowski